

1 LAURA A. SCHROEDER, ESQ, NSB#3595
LYNN L. STEYAERT, NSB#3337
2 Schroeder Law Offices, P.C.
1915 N.E. 39th Avenue, P.O. Box 12527
3 Portland, Oregon 97212-0527
PHONE (503) 281-4100; FAX (503) 281-4600
4 counsel@water-law.com
Attorneys for the Defendants
5
6
7

8 IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
9

10 UNITED STATES OF AMERICA AND
THE WALKER RIVER PAIUTE TRIBE,

11 Plaintiff(s),

12 vs.

13 THE WALKER RIVER IRRIGATION
DISTRICT, et al,

14 Defendant(s).
15

IN EQUITY NO. C-125-B-ECR
3:73-cv-00127-ECR-(RAM)

OPENING BRIEF IDENTIFYING
THRESHOLD ISSUES

16 I. INTRODUCTION

17 Pursuant to this Court's order of July 25, 2008, (Doc. No.478), Circle Bar N Ranch,
18 L.L.C, et al., ("Circle Bar N") by and through their attorney Laura A. Schroeder and Schroeder
19 Law Offices, P.C., submit this Opening Brief that identifies threshold issues that Circle Bar N
20 proposes must be resolved at the outset of this matter.

21 The Court has requested the parties to provide an explanation of what characteristic they
22 perceived as establishing a threshold issue. In the Case Management Order entered on April 19,
23 2000, the court identified a number of issues as "threshold issues," that is, those that should be
24 addressed at the outset of the litigation. Consistent with that definition, we would propose to
25 define a threshold issue as one that should be decided in the early stages of litigation as it will
26 limit the scope of litigation, eliminating issues or counterclaims that are not sustainable under the

{P0144944; 0800.00 LLS }



1 Winters Doctrine. Included in this definition of threshold issues are jurisdictional matters, claim
2 and issue preclusion, and equitable and other defenses referenced by Court in its *Case*
3 *Management Order* filed April 19, 2000 (Doc. 108 at 9).

4 We do not, however, propose that all of the threshold issues should be addressed
5 concurrently. Certain of the issues identified in the *Proposed Threshold Issues* (Doc. 1361)
6 submitted by the counterdefendant parties are second and third tier issues for analysis. For
7 example, the primary issues of whether a federally reserved right for groundwater may be
8 claimed for the lands within the Reservation as of June 14, 1936 ("Decree Lands") and for the
9 lands added to the Reservation in 1936 ("1936 Lands") should be resolved before the Court
10 considers the issue of whether it is required to accept the distinction drawn between surface
11 water rights and groundwater rights provide by Nevada and California law.

12 Early in the proceedings, the United States and Tribe, in their *Response to Joint Motion*
13 *by Walker River Irrigation District and State of Nevada Concerning Case Management* (Doc.
14 101 at 2), proposed that the initial phase of litigation focus on certain legal issues related to the
15 Court's jurisdiction, groundwater, and affirmative defenses that the other parties might assert. It
16 appears that the United States and Tribes are back peddling with regard to their position on
17 affirmative defenses, as they appear to be objecting to the inclusion of affirmative defenses as
18 threshold issues. This concern purportedly arises from the belief that if such items are included,
19 it will provide the counterdefendants with a means of short-cutting litigation, thereby allowing
20 them to "avoid the requirements of the Federal Rules of Civil Procedure." See *United States of*
21 *America's and Walker River Paiute Tribe's Proposed List of Preliminary Threshold Issues*
22 (Doc.1360 at 3). The Plaintiffs' apparent lack of confidence in the Court's ability to discern
23 which issues are purely legal questions as opposed to those that involve factual determinations is
24 misplaced. The Court, as was stated in the *Case Management Order* (Doc. 108 at 13-114), has
25 already acknowledged that certain of the threshold issues may require discovery and even an
26 evidentiary hearing before any final determination is made.

{P0144944; 0800.00 LLS }



Three of the United States' eleven claims for relief and the Tribe's claims for relief are currently before the Court as a result of the bifurcation of the Tribal Claim from others filed by the United States. (*See* Doc. 108). The claims relate to 1) a surface water claim for the lands added to the Reservation in 1936 ("1936 Lands"), 2) a storage claim for Walker River surface waters in Weber Reservoir for use on the lands of the Reservation as it existed as of June 14, 1936 ("Decree Lands"), as well as on the 1936 Lands, and 3) groundwater underlying and adjacent to Decree Lands and 1936 Lands. When discussing threshold issues, jurisdictional issues impacting both reservations will be addressed first, followed by separate discussions of specific issues relating to claims for the lands existing in the Decree Lands and those added as a result of the 1936 legislation. Finally, second and third tier issues will be presented.

While this approach may entail some redundancy, the rationale for this organization derives from *Winters* and its progeny, which hold that if the United States impliedly reserves waters for a federal reservation, the court must examine the purpose for the creation of the reservation when determining the scope of that right.

In determining whether there is a federally reserved water right implicit in a federal reservation of public land, the issue is whether the Government intended to reserve unappropriated and thus available water. Intent is inferred if the previously unappropriated waters are necessary to accomplish the purposes for which the reservation was created. *See, E. g., Arizona v. California*, supra, 373 U.S., at 599-601, 83 S.Ct., at 1497-1498, 10 L.Ed.2d, at 577-578; *Winters v. United States*, supra, 207 U.S., at 576, 28 S.Ct., at 211, 52 L.Ed., at 346. *Cappaert v. United States*, 426 U.S. 128, 140, 96 S.Ct. 2062, 48 L.Ed.2d 523 (1976).

The purpose of the reservation with regard to the Decree Lands was to allow the Tribe to develop an agrarian lifestyle. *United States v. Walker River Irr. Dist.*, 104 F.2d 334, 339-340 (1939). Therefore water was reserved for irrigation purposes, whereas the reservation for the 1936 Lands was to provide the Tribe with additional lands for dry land stock grazing. S. R. 1750, 74th Cong., 2d Sess. 6-39 (1936). Given this purpose, the claims for federally reserved rights for these lands are of questionable merit. Only if the purpose of the reservation will fail

///

{P0144944; 0800.00 LLS }



without water, then, and only then, may this Court recognize impliedly reserved rights for the 1936 Lands. *United States v. New Mexico*, 438 U.S. 696, 700 (1978).

II. JURISDICTIONAL THRESHOLD ISSUE

A. Whether this Court has jurisdiction to adjudicate new claims for additional surface and/or underground water in Case C-125, a case in which a final judgment has been entered, or must a new and separate action form the basis for these claims?

This issue is a first tier threshold issue that must be addressed at the outset of the proceedings. Case C-125-ECR adjudicated the implied federally reserved rights for the Walker River Paiute Reservation as it existed as of June 14, 1936. *Decree, United States of America v. Walker River Irrigation District, et al.*, as amended Order for entry of Amended Final Decree to Conform to Writ of Mandate (D Nev. Apr. 24, 1940). This Court retained jurisdiction of this case solely for “the purpose of changing the duty of water or for correcting or modifying this decree; also for regulatory purposes, including a change of the place of use of any water user, but no water shall be sold or delivered outside the basin of the Walker River” While it is possible for this Court to modify or change the existing decree, no authority exists for reopening the decree to enlarge the United States’ decreed rights or providing additional rights to the Tribe in light of the fact that a final judgment was entered. A prohibition specifically precluding enlargement of a party’s rights is found in the provisions of the Decree. “Each and every party to this suit . . .and all persons claiming by, through or under them, and their successors and assigns in and to the water are forever enjoined and restrained from claiming any rights in or to the waters of Walker River and/or its branches and/or its tributaries, except the rights set up and specified in this decree. . . .”

Unlike the court in *Arizona v. California*, this Court did not retain jurisdiction of the action for the purpose of any supplementary decree. *See Arizona v. California*, 460 U.S. 605, 618 (1983). The United States and Tribe improperly filed their claims in Case No. C-125.

///

{P0144944; 0800.00 LLS }



1 III. INITIAL NONJURISDICTIONAL THRESHOLD ISSUES

2 A. Whether the express provisions of the Decree prevent the Tribe and the United States from
 3 asserting any claim in and to the waters of the Walker River and its tributaries that could have
 4 been asserted as of April 14, 1936, including a claim to a right for conservation storage?

5 This primary threshold issue poses a legal question that may be resolved by relying on
 6 the language of the decree and the doctrine of res judicata.

7 B. Whether the doctrines of claim (res judicata) and/or issue preclusion (collateral estoppel)
 8 bar any claim for storage rights, other than those for regulatory purposes, for those lands that
 9 were within the Reservation at the time the Decree was entered?

10 The issue of storage for the Decree Lands is a first tier threshold issue that must be
 11 addressed at the outset of the litigation phase. Presently, the only legal theory identified by the
 12 United States and Tribe for their claim for storage rights is the Winters Doctrine. While storage
 13 rights have been recognized as a result of federal legislation and in some cases consent decrees
 14 entered into between parties to litigation, no cases have been identified wherein an implied
 15 reserved right for storage has been identified. The United States and Tribe must establish their
 16 entitlement for such a storage claim under the Winters Doctrine, or any other federal common
 17 law theory.

18 Specifically, the viability of the United States' and Tribe's claims for storage water rights
 19 present a legal question that may be resolved by application of the doctrines of claim and issue
 20 preclusion. The 1936 Decree, as amended, awarded the full amount of "implied-reservation-of-
 21 water" rights that were required to support the Walker River Indian Reservation. See *United*
 22 *States v. Walker River Irr. Dist.*, 104 F.2d 334 (1939). The Tribe and United States are
 23 precluded from relitigating the issue of the quantity of the reserved water rights needed for the
 24 Walker River Indian Reservation. See *Nevada v. United States*, 463 U.S. 110, 133, 135 (1983).

25 Further, the court in *United States v. Walker River Irrigation District*, 11 F. Supp 158,
 26 164 (1935), *rev' on other grounds*, *United States v. Walker River Irrigation District*, 104 F.2d

{P0144944; 0800.00 LLS }



334 (9th Cir. 1939) addressed the issue of storage in its decision, referencing legislation passed by the Sixty-Ninth Congress, First Session, December 7, 1925 to July 3, 1926, for reconnaissance work in Schurz Canyon, on the Walker River, State of Nevada. The Court and the parties to the adjudication were aware of the need for conservation storage at the time the hearings were proceeding, and yet no claim was made. Therefore, claim and issue preclusion should operate to bar these claims.

C. Whether the doctrines of claim (res judicata) and/or issue preclusion (collateral estoppel) bar any claim for additional water from an underground source for lands that were within the Reservation at the time the Walker River Decree was entered?

The issue of whether the United States and Tribe may claim additional waters from an underground source for the Decree Lands is a first tier threshold issue that should be addressed at the outset of the litigation phase. While some federal courts have recognized that groundwater may be a component of the water impliedly reserved for an Indian reservation, the Supreme Court has not reached the issue of whether groundwater may be impliedly reserved. *See Cappaert v. United States*, 426 U.S.128, 142 (1976). Should this Court determines that water from underground sources may be claimed under the Winters Doctrine, resolution of the validity and/or scope of such claims must be addressed as a first tier threshold issue.

The attempt by the United States and Tribe to treat a claim for groundwater as a distinct entity from a claim for water from surface sources is improper. The criterion for awarding implied reserved rights is based on a court's determination as to the amount of water needed for the purpose of the Reservation, regardless of the source. In the case of the Decree Lands, this Court, following adoption of the findings of the special master, awarded the United States the amount of water that was determined to be needed to support the Reservation. There is no basis for claiming additional waters, whether surface or ground, for the Walker River Indian Reservation as it existed as of June 14, 1936.

///

{P0144944; 0800.00 LLS }



The United States and the Tribe, as beneficiary of the United States, should be barred by the doctrines of claim and issue preclusion from claiming additional water from an underground source. *See Nevada v. United States*, 463 U.S. 110, 133, 135 (1983). The Decree reflects the court's determination that the water awarded to the Tribe was sufficient to constitute the full "implied-reservation-of-water" rights reserved for Walker River Indian Reservation. *United States v. Walker River Irr. Dist.*, 104 F.2d 334 (1939).

D. Whether any water, surface or underground, was impliedly reserved when lands were added to the Reservation in 1936 in light of the following: (1) the language and history of the Act of Congress that authorized the addition of those lands; (2) the fact that the lands were added for grazing purposes; and (3) the fact that prior to their addition to the Reservation, those lands were designated as public domain and opened to entry under the Desert Lands Act?

The following initial threshold issues create legal questions that should be resolved by this Court at the outset of the litigation phase:

(1) What was the intended purpose for the reservation of 1936 Lands, as determinable from the legislation creating the Reservation, the circumstances surrounding the Reservation's creation, and the history of the Indians for whom it was reserved? *Coleville Confederated Tribes v. Walton*, 647 F.2d 42, 47 (1981); *see also Parravano v. Babbitt*, 70 F.3d 539, 543 (1995)).

(2) What is the scope of federally reserved rights that may be claimed for the 1936 Lands given the purpose of the reservation? *See United States v. New Mexico*, 438 U.S. 696, 701 (1978).

(3) Whether the Desert Lands Act effected a severance of waters from public domain lands so as to preclude claims for federally reserved rights for lands previously opened to entry? *California Oregon Power Co. v. Beaver Portland Cement Co.*, 129 U.S. 142 (1935), interpreted the Desert Lands Act as effecting a severance of all waters upon the public domain not theretofore appropriated. A patent issued thereafter for lands in a desert land state or territory, under any of the land laws of the United States, carried with it no common-law right to the water

{P0144944; 0800.00 LLS }



flowing through or bordering upon the lands conveyed. If any of the lands left the public domain, upon reacquisition of the land, the United States would obtain no greater water rights than those possessed by its predecessor in title when it purchases or condemns the land.

These issues are legal questions that may be readily addressed as initial threshold issues.

E. Whether the United States may reserve water, under the federally implied reservation of water doctrine, from a water source that is not within the lands being reserved?

This issue arises with regard to the various sections of public domain lands that Congress authorized the Secretary of the Interior to set aside pursuant to the Congressional Act of June 22, 1936 for addition to the Walker River Indian Reservation. Because the Walker River does not appear to run through or border most of the 1936 Lands parcels, a question arises as to whether the United States and Tribe may legitimately claim surface water rights for those parcels. Water claimed under the federally reserved rights doctrine is limited to waters within or bordering the exterior boundaries of reserved lands.

IV. SECOND TIER THRESHOLD ISSUES

A. Whether the doctrine of laches may be asserted against the counterclaims filed by the United States and Tribe?

While the applicability of the doctrine of laches to each of the United States' and Tribe's claims for relief may not be readily construed as initial threshold issues because of the factual foundation required to establish these equitable defenses, the issue of whether the doctrine of laches may be applied in the case of Indian claims is a legal question that may be addressed early in the proceedings. While a number of earlier federal decisions suggest that the doctrine of laches may not be used to bar a claim for Indian rights, a recent decision out of the 2nd Circuit, *Cayuga Indian Nation of New York v. Pataki*, 413 F.3d 266, 273 (CA2, 2005), *cert. denied*, *sub nom. U.S. v. Pataki*, 547 U.S. 1128 (2006), and *cert denied Cayuga Indian Nation of New York v. Pataki*, 547 U.S. 1128 (2006), relying on the United States Supreme Court *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005), establishes that tribal land claims may be barred by

{P0144944; 0800.00 LLS }



the doctrine of laches. This legal question should be addressed prior to preceding to the following second tier threshold issues:

1. Whether the doctrine of laches bars the conservation storage claims of the United States and the Tribe for the lands within the Reservation as it existed at the time of entry of the Walker River Decree?

As noted above, the court in *United States v. Walker River Irrigation District*, 11 F. Supp. 158, 164 (1935) addressed the issue of storage in its decision, referencing legislation passed by the Sixty-ninth Congress, First Session, December 7, 1925 to July 3, 1926, for reconnaissance work in Schurz Canyon, on the Walker River, State of Nevada. The court and the parties were aware of the need for conservation storage at the time the hearings were proceeding, and yet no claim was made. *See United States v. Walker River Irr. Dist.*, 11 F. Supp. 158, 164 (1935) (The court referenced the 1926 Blomgren report, which addressed water supply and storage needs for the Walker River Indian Reservation.) If this Court does not bar a claim for conservation storage as a result of a finding of claim and/or issue preclusion, the doctrine of laches may be applied to bar the claim, as the United States and Tribe acknowledged practical completion of construction of Weber Dam as of 1935 in their pleadings, yet delayed their claims for storage rights for 56 years.

2. Whether the doctrine of laches bars the United States' and the Tribe's claims for a water right from underground sources for the Reservation as it existed at the time of the entry of the Walker River Decree?

As the elements of laches include the need to establish a lack of diligence by the party against whom the defense is asserted and the prejudice to the party asserting the defense, *Cayuga Indian Nation of New York v. Pataki*, 413 F.3d 266 (CA 2 2005), some discovery may be required prior to resolution of this issue.

///

///

{P0144944; 0800.00 LLS }



1 3. Whether the doctrine of laches bars the United States' and Tribe's claims for federally
2 reserved water rights including surface water, underground water, and/or conservation storage
3 claims for the 1936 Lands?

4 Resolution of issues regarding the ability to claim groundwater and storage water under
5 the Winters Doctrine and the primary purpose of the reservation of the 1936 Lands should be
6 addressed prior to addressing the issue as to whether the United States' and Tribe's claims for
7 federally reserved water rights for the 1936 Lands should be barred by laches. It is anticipated
8 that discovery will be required before this threshold issue may be addressed.

9 B. Whether the doctrine of estoppel may be may be applied against the counterclaimants?

10 The generally issue of whether the doctrine of estoppel may be applied against the claims
11 of the United States and the Tribe, as its beneficiary, is a legal question that must be addressed
12 before proceeding to the following threshold issues:

13 1. Whether the doctrine of estoppel bars any claim for conservation storage water rights
14 for use on Decree Lands?

15 2. Whether the doctrine of estoppel bars any claim for a water right from underground
16 sources within Decree Lands?

17 The doctrine of estoppel may be asserted against the United States and Tribe to bar them
18 from claiming rights to water for conservation storage, as well as rights for water from an
19 underground source, to the detriment of the counterdefendants. The current claims for storage
20 and groundwater are inconsistent with the actions of the United States on behalf of the Tribe in
21 the initial Decree case, as no claim was made for storage water or groundwater, but only to direct
22 flow surface waters of the Walker River and its tributaries to support the Reservation. This was
23 true despite the fact that a report was published in the Congressional Record in 1926 describing
24 the need for the construction of a dam for storage purposes. The new claims are inconsistent
25 with the United States' initial posture and may not be adopted to the detriment of the
26 counterdefendants. While there may be the need for some discovery, this is a threshold issue that

{P0144944; 0800.00 LLS }



1 should be resolved prior to moving forward with litigation of the case.

2 3. Whether the doctrine of estoppel bars any claim for conservation storage water rights
3 for use on the 1936 Lands?

4 4. Whether the doctrine of estoppel bars any claim for a water right from underground
5 sources within the 1936 Lands?

6 As was discussed with regard to the Decree Lands, the posture assumed by the United
7 States in the Decree case was inconsistent with that in the current case regarding the entitlement
8 to storage water and groundwater. The counterplaintiffs should be barred from adopting a
9 position that results in a loss or injury to those counterdefendants that detrimentally relied on this
10 posture. It is also inconsistent with the provisions of the legislation authorizing the Secretary of
11 the Interior to withdraw the 1936 Lands for the Reservation. The legislation specifically
12 provided that “said withdrawal shall not affect any valid rights initiated prior to the approval
13 hereof.” 74 Congress. Sess. II. Ch. 698, June 22, 1936.

14 C. Whether through its commencement and resolution of claims against the United States, the
15 Tribe’s claims (a) for water from underground sources and (b) for a conservation storage water
16 right for Weber Reservoir have been waived and are therefore extinguished?

17 These issues will require some legal research and discovery; however, when this
18 preparatory work is completed, these threshold issues should be readily resolved.

19 V. THIRD TIER ISSUES

20 A. Whether, regardless of the extent of hydrologic connection between surface and
21 groundwater, this court is required to accept the distinction drawn between surface water rights
22 and groundwater rights provided by California and Nevada law?

23 B. Whether the Court has jurisdiction over groundwater used pursuant to State law outside the
24 exterior boundaries of the Walker River Paiute Indian Reservation if such use interferes with the
25 Tribe’s rights under federal law to use water from the Walker River System? If so, should the
26 Court exercise that jurisdiction?

{P0144944; 0800.00 LLS }



1 C. Are the holders of surface water rights established under federal law entitled to protection
2 from the use of groundwater beyond the protection provided to holders of surface water rights
3 established under state laws?

4 D. If the Tribe has the right to pump groundwater under federal law, are such rights, as a
5 matter of federal law subject to different protections than those provided by State law?

6 E. If the only jurisdiction of this court with respect to groundwater issues is to protect surface
7 water rights established under federal law from interference by junior groundwater users, must
8 the issues of interference be decided as part of the adjudication of federal surface water claims?

9 F. If the Tribe has no claim to underground water on the Reservation based upon the implied
10 reservation of water doctrine, or based upon any other theory of federal common law, does the
11 State of Nevada have jurisdiction to regulate the use of underground water on the Reservation?

12 Resolution of the initial and second tier threshold issues may obviate the need for the
13 Court to reach the issues raised by the above questions for the following reasons: 1) the doctrine
14 of claim and/or issue preclusion may preclude a claim for groundwater for the Decree Lands; 2)
15 a determination as to the primary purpose of the reservation of the 1936 Lands and whether this
16 reservation will fail without the availability of water may preclude a claim for surface water,
17 groundwater, and conservation storage for those lands; and 3) claims for groundwater may be
18 effectively barred by other affirmative and equitable defenses.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

{P0144944; 0800.00 LLS }



VI. CONCLUSION

As proposed by the Walker River Irrigation District in its Opening Brief on Threshold Issues, bifurcation of potentially dispositive matters pursuant to F.R.C.P. 42(b), may obviate the need for further litigation, expediting resolution of this matter and reducing expenditure of judicial and party resources. Following resolution of the jurisdictional issue, should this Court determine that it has retained jurisdiction to entertain the Tribal Claims in Case No. C-125, Subfile B, Circle Bar N Ranch, et al. respectfully request that this Court order this matter be bifurcated so that the initial and second tier threshold issues identified above may be addressed prior to proceeding to further trial on the merits.

Submitted this 5th day of September, 2008.

SCHROEDER LAW OFFICES, P.C.

/s/ Laura A. Schroeder

Laura A. Schroeder, NSB 3595
Lynn L. Steyaert, NSB 3337
Attorneys for Defendants Circle Bar N, et al.
PO Box 12527, Portland, OR 97212
Phone: (503) 281-4100

{P0144944; 0800.00 LLS }



CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that I am an employee of Schroeder Law Offices, P.C., over the age of eighteen and not a party to the within action, and that on this date I electronically filed the foregoing document titled **Opening Brief Identifying Threshold Issues** with the Clerk of the Court using the CM/ECF system, and I served or caused it to be served by electronic mail CM/ECF (as indicated with an asterisk) or first-class mail, postage prepaid, addressed to the following persons:

Marta A. Adams*
Deputy Attorney General
State of Nevada
100 N. Carson Street
Carson City, NV 89701-4717
madams@ag.state.nv.us
cbrackley@ag.nv.gov

Gordon H. DePaoli*/ Dale E. Ferguson Esq.*
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511
gdepaoli@woodburnandwedge.com
dferguson@woodburnandwedge.com
cmayhew@woodburnandwedge.com

John W. Howard*
1508 West Lewis St.,
San Diego, CA 92103
john@jwhowardattorneys.com
elisam@jwhowardattorneys.com

Karen A. Peterson*
Allison, MacKenzie, Pavlakis, Wright &
Fagan, Ltd.
402 North Division Street,
PO Box 646
Carson City, NV 89702
kpeterson@allisonmackenzie.com
nlillywhite@allisonmackenzie.com
voneill@allisonmackenzie.com

Gregory W. Addington*
Asst. US Attorney
100 W. Liberty St., Suite 600
Reno, NV 89509
greg.addington@usdoj.gov
judy.farmer@usdoj.gov
joanie.silvershield@usdoj.gov

Susan Schneider*
US Department of Justice
Environment and Natural Resources Division
1961 Stout Street, 8th Floor
Denver, CO 80294
susan.schneider@usdoj.gov
catherine.wilsonbia@gmail.com
chriswatson.sol@gmail.com
eileen.rutherford@usdoj.gov
yvonne.marsh@usdoj.gov

David L. Negri*
United States Department of Justice
Env. And Natural Resources Division
161 E. Mallard Dr., Suite A
Boise, ID 83706
david.negri@usdoj.gov

Michael Neville, Deputy Attorney General*
DOJ, Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-3664
michael.neville@doj.ca.gov
cory.marcelino@doj.ca.gov

Cheri K Emm-Smith*
Mineral County District Attorney
P.O. Box 1210
Hawthorne, NV 89415
districtattorney@mineralcountynv.org

Simeon Herskovits*
Advocates for Community and Environment
129-C Kit Carson Road
Taos, NM 87571
simeon@communityandenvironment.net

Erin K. L. Mahaney*
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
emahaney@waterboards.ca.gov

Wes Williams, Jr.*
Law Offices of Wes Williams, Jr.
P.O. Box 100
Schurz, NV 89427
wwilliams@stanfordalumni.org

William E. Schaeffer*
P.O. Box 936
Battle Mountain, NV 89820
lander_lawyer@yahoo.com

Dated this 5th day of September, 2008

George Benesch*
190 West Huffaker Lane, #408
Reno, NV 89511
gbenesch@sbcglobal.net

Bryan L. Stockton*
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
blstockt@ag.state.nv.us
sgeyer@ag.nv.gov

Marshall S. Rudolph, Mono County Counsel
Stacy Simon, Deputy County Counsel*
P.O. Box 2415
Mammoth Lakes, CA 93546-2415
ssimon@mono.ca.gov

Donald B. Mooney
Law Offices of Donald B. Mooney
129 "C" Street, Suite 2
Davis, CA 95616

/s/ Tara J. Jackson

Tara J. Jackson, Paralegal